



ఆంధ్రప్రదేశ్ రాజ పత్రము
THE ANDHRA PRADESH GAZETTE
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W.No.51

AMARAVATI, FRIDAY, DECEMBER 23, 2022

G.2353

PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

**PRINCIPAL SENIOR CIVIL JUDGE's COURT ::
NELLORE**

Friday, this the 3rd day of January, 2020

I.P.No.57 OF 2016

Udatha Narayana, S/o.Late Kondaiah,
Hindu, aged about 42 years,
Residing at Pottempadu Village and Post,
Muthukuru Mandal, SPSR Nellore District.

... Petitioner/Creditor

Vs.

1. Shaik Basha Saheb, S/o.Late Masthan Saheb,
Muslim, aged about 57 years,
Residing at Pottempadu Village and Post,
Muthukuru Mandal, SPSR Nellore District.
Presently residing at Guravaiahala,
Brahmadevam Village and Post, SPSR Nellore District.
2. Shaik Karimulla, S/o.Basha Saheb,
Muslim, aged about 37 years,
Residing at Pottempadu Village and Post,
Muthukuru Mandal, SPSR Nellore District.
Presently residing at Guravaiahala,
Brahmadevam Village and Post, SPSR Nellore District.

3. Shaik Amrulla, S/o.Basha Saheb,
Muslim, aged about 35 years,
Residing at Pottempadu Village and Post,
Muthukuru Mandal, SPSR Nellore District.
Presently residing at Guravaiahsala,
Brahmadevam Village and Post, SPSR Nellore District.
 4. ShaikShameem, W/o.Basha Saheb,
Muslim, aged about 52 years,
Residing at Pottempadu Village and Post,
Muthukuru Mandal, SPSR Nellore District.
Presently residing at Guravaiahsala,
Brahmadevam Village and Post, SPSR Nellore District.
 5. Vendoti Devasenamma, W/o.Late Chandrasekhar Reddy,
Hindu, aged about 50 years,
Residing at Pottempadu Village and Post,
Muthukuru Mandal, SPSR Nellore District.
 6. Panta Prameelamma, W/o. Subba Reddy,
Hindu, aged about 63 years,
Residing at D.No.10-15-35//8/6, ABM Compound,
GNT Road, Kavali Town, SPSR Nellore District.
 7. Yeluru Padmaja, W/o.Maheswara Reddy,
Hindu, aged about 31 years,
Residing at Pottempadu Village and Post,
Muthukuru Mandal, SPSR Nellore District.
 8. Chennareddy Prabhakar Reddy, S/o.Radha Reddy,
Hindu, aged about 39 years,
Residing at Pottempadu Village and Post,
Muthukuru Mandal, SPSR Nellore District.
- ... Respondents**

This petition is coming on 19.11.2019 for final hearing before me in the presence of Sri.O.Abbai Reddy, Advocate for the Petitioner and Sri.P.Surya Narayana, Advocate for the respondents Nos.1 and 3, and of Sri.T.Babu Reddy, Advocate for the Respondents Nos.5, 6 and 8, and Ms.A.Niveditha, Advocate for 7th respondent, and the respondents 2 and 4 remained exparte, and the matter having stood over for consideration till this day, this Court made the following :-

ORDER

The petitioner/creditor filed this insolvency petition against the respondents 1 to 8 under Section.9 of Provincial Insolvency Act, 1920 to adjudge the 1st respondent as an insolvent; and the registered sale deeds. dt.26-09-2016 and dt.06-10-2016 respectively executed by the respondent

Nos.1 to 4 in favour of respondent Nos.5 to 8 vide Document Nos.1600/2016, 1601/2016, 1674/2016 and 1675/2016 be null and void and those shall be set aside and petition schedule properties shall vest to the Official Receiver, Nellore for due administration and for costs.

2) **The brief averments in the petition are as follows :-** The 1st respondent borrowed an amount of Rs.90,000/- on 19-04-2015 and also borrowed an amount of Rs.90,000/- on 14-03-2016 from the petitioner for his family necessities agreeing to repay the same together with interest at the rate of 24% pa either to the petitioner or to his order on demand and executed two promissory separate notes on respective dates. Later 1st respondent did not choose to repay the amount due under the above said two promissory notes with an intention to deprive his rights and cause multiple legal complications, the 1st respondent along with his family members ie., R2 to R4 in collusion with the third parties sold away the plaint schedule properties with an intention to defeat and deprive the creditors ie., petitioner herein. In spite of repeated oral demands the 1st respondent has not chosen to pay any amount due under the above said promissory notes. Except the plaint schedule properties, the 1st respondent has no other properties and he has already secreted the cash and gold jewels. The petitioner came to know that the respondents 1 to 4 executed nominal registered sale deeds in favour of Respondents 5 to 8 in respect of petition schedule properties with an dishonest intention to evade the payment to him towards the amount due above said two promissory notes. He obtained certified copies of those sale deeds and those are not binding on him. He got issued a legal notice to the respondents on 15-11-2016 and those notices were served on

Respondents 6 to 8 and the notices of Respondents 1 to 4 were returned as unserved and the notice of 5th respondent not returned as on the date of filing of the petition. Prays to allow the petition.

3) Notices were issued to respondents 1 to 8. Respondents 2, 4 were set exparte. Respondents 2, 4 remained exparte. The 1st respondent filed Counter and the same was adopted by the 3rd respondent. The 5th respondent filed counter and the same was adopted by the 7th and 8th respondents.

4) **The brief averments of the counter of the 1st respondent are that:-** He denied the promissory notes transaction between them on 19-04-2015 and 14-03-2016 each for a sum of Rs.90,000/- each. Petitioner did not file any suit against him for recovery of debt amount. The sale deeds in favour of the respondents are genuine. The promissory notes mentioned in the above case was settled between the petitioner and the 1st respondent and the petitioner did not return the same on the ground those are misplaced and the 1st respondent kept quite. The petition schedule property value is Rs.23,73,000/-. This petition is filed to harass the respondents. Prays to dismiss the petition.

5) **The brief averments of the counter of the 5th respondent are that:-** He also denied the contents of the petition and submitted that the transaction between the respondents 1 to 4 and respondents 5 to 8 are known to all the villagers. Petitioner with a dishonest intention and on previous grudges on political issues, approached respondents 1 to 4 and created two promissory notes with the help of Mannepalli Venkateswarlu, Ch.Pulliah and basing on those fabricated promissory notes he got issued a legal notice and after receiving the said legal notice they approached the

petitioner and they made a mediation, but it was failed. The allegations in the petition are very vague. The 1st respondent received huge amount from respondents 5 to 8. There is no need for petitioner to add all the properties. This petition is filed to harass them. Prays to dismiss the petition.

6) On behalf of the Petitioner, the petitioner himself got examined as Pw.1 and 1st attestor of promissory notes is examined as PW.2 and got marked Exs.A1 to A12. Petitioner evidence closed. The respondents 1, 3, 5, 6, 7 and 8 did not adduce any evidence and no documents are marked on their behalf and they did not cross-examine PWs.1 and 2. They remained exparte. Later they filed IAs to set aside the exparte order, but they did not prosecute the case. It appears they filed those petitions with an intention to drag the case and they have no intention to contest the case. Hence, the cross-examination of respondents treated as "NIL". The respondent Nos.2 and 4 remained exparte. Respondents evidence closed.

7) Heard the counsel for the petitioner.

8) Now, the points for determination is:

1. Whether there are any grounds to declare the 1st respondent as an insolvent as he committed an act of insolvency by alienating the petition schedule properties?

2. Whether the sale deeds executed by 1st respondent along with respondents 2 to 4 in favour of respondents 5 to 8 are liable to be canceled?

POINT No.1:- 1. Whether there are any grounds to declare the 1st respondent as an insolvent as he committed an act of insolvency by alienating the petition schedule properties?

9) Pw.1 reiterated the contents of the petition in their chief-examination affidavit. In support of his version he got filed certified copies of decree and judgment in OS No.266/2018 on the file of 1st Addl. Junior

Civil Judge Court, Nellore, dated.25-06-2019 basing on the promissory notes executed by the 1st respondent in his favour. The said documents are marked as Exs.A11 and A12. The promissory notes in that case and the debt claimed by the petitioner in this case is one and the same. Thus, those documents ie., Exs.A11 and A12 and evidence of petitioner clearly proves, the 1st respondent indebted to the petitioner and petitioner obtained decree for recovery of amount against the 1st respondent. The petitioner is the Decree Holder. The contents of promissory notes under Exs.A1 and A2 were denied by the 1st respondent, but he did not adduce any evidence in support of his plea. The evidence of PW.1 is supported by the evidence of PW.2, attesor. Thus, the petitioner is able to prove the debtor and creditor relationship between the petitioner and the 1st respondent. The 1st respondent did not challenge the contents of the petition by way of cross-examination. In view of unchallenged evidence of PW.1 and contents of Exs.A1 to A12, it is proved that the 1st respondent indebted to the petitioner under Exs.A1 and A2 promissory notes and petitioner became decree holder as per Exs.A11 and A12 Decree and Judgment in 266/2018 on the file of 1st Addl. Junior Civil Judge Court, Nellore, dated.25-06-2019. Thus, the petitioner is able to prove the debtor and creditor relationship between petitioner and 1st respondent. There is no dispute with regard to actual amount due by the 1st respondent. The petitioner categorically deposed with a view to defraud the creditors, 1st respondent sold the property. The said fact was not denied by the respondents. Thus, the petitioner proved, 1st respondent sold the property to defraud the creditor i.e., petitioner. Even a single creditor can maintain the petition. It appears 1st respondent with a view to evade the debt

amount to the petitioner and to defraud him and to defeat the interest of the petitioner executed the sale deeds under Ex.A3 to A6 in favour of respondents 3 to 8 along with respondents 2 to 4 . The said act is an act of insolvency, hence, the 1st respondent is liable to be adjudged as an insolvent.

POINT NO. 2 :- Whether the sale deeds executed by 1st respondent along with respondents 2 to 4 in favour of respondents 5 to 8 are liable to be canceled?

10) The 1st respondent executed all the sale deeds with regard to his all properties in favour of respondents 3 to 8 on 26-09-2016 and 06-10-2016 and the property is worth of Rs.23,00,000/-. The amount due to the petitioner is only Rs.1,80,000/-. If really he received consideration amount, he could have discharged the amount due to the petitioner. That is also another ground to believe those sale deeds are not supported by consideration and those are sham and nominal documents. He executed sale deeds in favour of Respondents 4 to 8 along with respondents 2 and 3. But the petition schedule properties are worth of Rs.23,00,000/- as on the date of execution of sale deeds in favour of Respondents 1, 3, 5 and 7. As on the date of execution of Exs.A5 and A6 on 06-10-2016, he do not have any other properties. Except petition schedule properties, he do not have any other properties under Ex.A5 and A6. Hence, there is no need to set aside the sale deeds under Exs.A3 and A4 dt.26-09-2016 executed by 1st respondent in favour of Respondents 3, 5 and 6. Hence, the Official receiver can take steps to set aside the sale deeds under Ex.A6 registered sale deed dt.06-10-2016 executed by 1st respondent and others in favour of 8th respondent. The petition is filed on 13-12-

2016. The sale deeds were executed on 26-09-2016 and 06-10-2016. That means the petition is filed within 90 days from the date of execution of sale deeds as per Sec.9(c) of Provincial Insolvency Act, 1920. The debt amount is more than Rs.500/-. There is a clear plea except the petition schedule properties, no other properties are available with the 1st respondent. Hence, the 1st respondent is liable to be adjudged as an insolvent under Section.9 of Provincial Insolvency At, 1920.

11) In the result, the Insolvency Petition is allowed with costs adjudging the 1st respondent as an insolvent.

As per Sec.27 of Insolvency Act, 1920, the 1st respondent shall apply within three months from the date of this order for his discharge. In default, he is liable to be declared as insolvent, then the publication shall be made in Official Gazetee.

Publish an order of adjudication as per Sec.30 of Provincial Insolvency Act, 1920 in Official Gazette with details of notice of order of adjudication stating the name, addresses, descriptions of the insolvent/1st respondent, date of adjudication, the period within which the debtor shall apply for his discharge and the Court by which the adjudication is made in the manner as prescribed.

As per Sec.28 (2) of Provincial Insolvency Act, 1920 petition schedule property i.e., Item No.5 of the petition schedule property alone belongs to the 1st respondent/insolvent shall forthwith vest in the Court and which then upon vests in Official Receiver U/Sec.56 (1) of Provincial Insolvency Act, 1920. The possession also vests with the Official Receiver.

After Gazetee publication, steps shall be taken by filing necessary petition to declare the sale deed relating to Item No.5 of the Petition

Schedule property is voidable and to set aside with regard to the Item No.5 of the Petition Schedule property.

As per Sec.28(7) of Provincial Insolvency Act, 1920 after order of adjudication shall relate back to and take effect from the date of presentation of petition on which it is made i.e., 13.12.2016.

The Office is directed to forward copy of order to the Official Receiver.

Time granted till 03-04-2020 to 1st respondent for applying for discharge.

Call on 03-04-2020

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open court on this the 3rd day of January, 2020.

T. HARITHA,

Principal Senior Civil Judge, Nellore.

APPENDIX OF EVIDENCE
Witnesses examined

For Petitioners :-

PW1: U.Narayana

PW2: M.Venkateswarlu

For Respondents 1 and 3 :-

- NONE -

For Respondents 5, 7 and 8 :-

- NONE -

For Respondents 2, 4 and 6 :-

- NONE - (Exparte)

Documents marked**For Petitioner :-**

Exhibit	Date	Description of the document
A1	19-04-2015	Original promissory note for Rs.90,000/- said to be executed by 1st respondent in favour of petitioner.
A2	14-03-2016	Original promissory note for Rs.90,000/- said to be executed by 1st respondent in favour of petitioner.
A3	26-09-2016	Certified copy of registered sale deed executed by 1st respondent in favour of 3rd and 5 th respondents.
A4	26-09-2016	Certified copy of registered sale deed executed by 1st respondent in favour of 3rd and 6 th respondents.
A5	06-10-2016	Certified copy of registered sale deed executed by 1st respondent in favour of 4 th respondent.
A6	06-10-2016	Certified copy of registered sale deed executed by 1st respondent in favour of 8 th respondent.
A7	15-11-2016	Office copy of registered legal notice sent by the petitioner to the respondents along with postal receipts.
A8	---	Returned Registered legal notice covers of the 1st to 4 th respondents (4 in number).
A9	---	Served postal acknowledgement cards of the registered legal notice of 6 th to 8 th respondents (3 in number)
A10	---	Certified copy of Plaint in OS No.266/2018 on the file of I Addl. Junior Civil Judge, Nellore.
A11	25-06-2019	Certified copy of Decree in OS No.266/2018 on the file of I Addl. Junior Civil Judge, Nellore.
A12	25-06-2019	Certified copy of Judgment in OS No.266/2018 on the file of I Addl. Junior Civil Judge, Nellore.

For Respondents 1 and 3 :- NIL.**For Respondents 5, 6, 7 and 8 :-** NIL.**For Respondents 2 and 4 :-** NIL. (Exparte)**T. HARITHA,***Principal Senior Civil Judge, Nellore.*

[Dis No.774.]